

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

FREEPLAY MUSIC, LLC,
1650 Broadway, Suite 1108
New York, NY 10019

Plaintiff,

v.

DAVE ARBOGAST BUICK-GMC, INC.
3540 South Co. Road, 25A
Troy, OH 45373

Defendant.

Case No. 3:17-cv-42

JUDGE: _____

COMPLAINT WITH JURY DEMAND

Plaintiff Freeplay Music, LLC (“FPM”), through its undersigned attorneys, Baker & Hostetler, LLP, complains of defendant Dave Arbogast Buick-GMC, Inc. (“Arbogast”):

Nature of the Action

1. By this complaint, FPM—a music publisher that has invested and risked money, time, and energy to develop its catalogue of copyrights—seeks redress for Arbogast’s copyright infringement. Arbogast exploited, without authorization, 23 of FPM’s copyrighted sound recordings and compositions by incorporating them into videos, posted on 279 websites, for its own products. Despite being on notice of its infringement, Arbogast has refused to remedy its wrongdoing, leaving FPM no alternative but to bring this action.

Parties

2. FPM is a Delaware limited liability company, with a principle place of business in New York, New York.

3. Arbogast is an Ohio corporation, with a principal place of business in Troy, OH.

Jurisdiction and Venue

4. FPM's claims arise under the Copyright Act, 17 U.S.C. §§ 101 *et seq.* Subject matter jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338.

5. Venue in this District is proper under 28 U.S.C. § 1391.

6. The Court has personal jurisdiction over Arbogast as an Ohio corporation with its primary place of business in Troy, Ohio.

FPM and Its Business

7. In 2001, Scott Schreer, one of America's most prolific and performed TV composers and producers, launched FPM, a high quality online music library. Schreer, whose credits include, among many others, the *NFL on Fox* theme, is also a contributing composer to a portion of FPM's catalogue.

8. FPM makes its catalogue available on its website, <http://www.freeplaymusic.com>. To download music a user must obtain a license that corresponds to the user's use (i.e., personal, commercial, etc.). The cost of such license varies depending on use.

9. With over 200,000,000 impressions to its website as of 2013, FPM is one of the most widely trafficked production music libraries in the industry. Since August 2013, FPM has issued over 3.4 million licenses to the copyrighted music in its library.

10. A user viewing FPM's website is presented with a variety of choices and thousands of musical works (i.e., sound recordings and the underlying musical compositions), all of which are available for certain types of exploitation.

11. All use of FPM's music requires a license.

12. Until July 2013, any exploitation of FPM's music "posted on a website" required a paid license. After July 2013, a user could obtain a free license to use certain music in FPM's catalogue on YouTube, provided it was for "personal use" only.

13. At all relevant times, any "business use" of FPM's music has required a paid license.

14. The uses complained of herein are business uses.

Arbogast

15. Upon information and belief, Arbogast is a car dealership that markets its vehicles in various ways, including through audio-visual works. Upon information and belief, Arbogast has published some of these audio-visual works on different Internet sites, including, but not limited to, the Internet site hosted by YouTube.

The FPM Copyrights at Issue and Arbogast's Unauthorized Exploitation

FPM's Copyrights

16. FPM is the owner of the registered copyrights (the "FPM Copyrights") in and to the musical compositions and sound recordings (the "FPM Copyrighted Music") set forth below:

- a. "Can Do," covered by Registration No. SR 333-631 covering the collection *Motivational Volume 1*.
- b. "Challenge The Dream," covered by Registration No. SR 337-156 covering the collection *Motivational Volume 2*.

- c. “Charlie,” covered by Registration No. SR 378-924 covering the collection *Freeplay Music Corp./DVD #5*.
- d. “Corn Liquor,” covered by Registration No. SR 337-057 covering the collection *Country Volume 1*.
- e. “Cuttin Loose,” covered by Registration No. SR 337-057 covering the collection *Country Volume 1*.
- f. “Driftwood,” covered by Registration No. SR 362-469 covering the collection *Just The Weather Volume 1*.
- g. “The Edge” covered by Registration No. SR 333-636 covering the collection *Business & Finance Volume 1*.
- h. “Feel Good,” covered by Registration No. SR 374-912 covering the collection *Freeplay Music Corp./DVD #3*.
- i. “Funky Pad,” covered by Registration No. SR 396-282 covering the collection *Freeplay Music Corp./DVD #9*.
- j. “Ground Squad,” covered by Registration No. SR 633-492 covering the collection *Freeplay Music, LLC/CD #12*.
- k. “Hear Me Calling,” covered by Registration No. SR 396-282 covering the collection *Freeplay Music Corp./DVD #9*.
- l. “Heartland,” covered by Registration No. SR 337-200 covering the collection *Beauty Shots Volume 1*.
- m. “Mod Indigo,” covered by Registration No. SR 333-651 covering the collection *Alternative Rock Volume 1*.
- n. “Moonbeams,” covered by Registration No. SR 335-879 covering the collection *Promos Volume 2*.
- o. “Right On It,” covered by Registration No. SR 396-282 covering the collection *Freeplay Music Corp./DVD #9*.
- p. “Soul Thang,” covered by Registration No. SR 337-201 covering the collection *Acid Jazz Volume 1*.
- q. “Spice Factor,” covered by Registration No. SR 335-678 covering the collection *Hot Guitar Rock Volume 1*.
- r. “Surf Nation,” covered by Registration No. SR 374-912 covering the collection *Freeplay Music Corp./DVD #3*.

- s. “Swing Cheese,” covered by Registration No. SR 337-557 covering the collection *Promos Volume 1*.
- t. “Tea For Two,” covered by Registration No. SR 382-040 covering the collection *Freeplay Music Corp./DVD #1*.
- u. “Up The Downbeat” (originally titled “Kick It”) covered by Registration No. SR 337-057 covering the collection *Country Volume 1*.
- v. “Your Eyes On Glory,” covered by Registration No. SR 333-631 covering the collection *Motivational Volume 1*.

17. FPM has the exclusive rights to the musical composition and sound recording “Through The Grassy Hills,” and has filed an application for that musical work (“Unregistered Musical Work”).

Arbogast’s Unlicensed Use of FPM’s Copyrighted Music and Unregistered Musical Work

18. Arbogast has engaged in at least 279 uses of the FPM Copyrights and musical works, including:

- a. FPM’s copyrighted musical work “Can Do” is exploited on the following websites:

<http://www.youtube.com/watch?v=RKOTNI-LWbs>,
<http://www.youtube.com/watch?v=GLMMtxv-sUE>,
<http://www.youtube.com/watch?v=sggxZ0mNF3M>,
<http://www.youtube.com/watch?v=MxEU3RDlLEo>,
<http://www.youtube.com/watch?v=w6To6dgGrRw>,
<http://www.youtube.com/watch?v=Of0FfLMShpY>,
<http://www.youtube.com/watch?v=OiWrb-2Ogko>,
<http://www.youtube.com/watch?v=LBNJ3RxayDQ>,
<http://www.youtube.com/watch?v=FK2bDMQAJ4I>,
<http://www.youtube.com/watch?v=b5cuPzsqr7w>,
<http://www.youtube.com/watch?v=UblN6feusug>,
<http://www.youtube.com/watch?v=IgAriu2qr-A>,
<http://www.youtube.com/watch?v=Fn7QQEG2mGg>,
<http://www.youtube.com/watch?v=ySz3TCY9hQw>,
<http://www.youtube.com/watch?v=ukao1jhtmlU>,
<http://www.youtube.com/watch?v=YgQDVG38HI4>,
http://www.youtube.com/watch?v=0wW75dShu_o,
<http://www.youtube.com/watch?v=3rNCbPyz46A>,
<http://www.youtube.com/watch?v=xll0M9xIUAW>,
<http://www.youtube.com/watch?v=BUhDTyPPREk>,
<http://www.youtube.com/watch?v=MVhHlNdN9fQ>,
<http://www.youtube.com/watch?v=E7gC-APC0hc>,

<http://www.youtube.com/watch?v=ijFNC8ZF2sw>,
<http://www.youtube.com/watch?v=fupomUo05To>,
<http://www.youtube.com/watch?v=nXQh4CSKiNg>,
<http://www.youtube.com/watch?v=1CQQmQUdINQ>,
<http://www.youtube.com/watch?v=qmpKAtl62DY>,
http://www.youtube.com/watch?v=Sm-g3Ysna_U,
<http://www.youtube.com/watch?v=9i3whQ0wnIw>,
<http://www.youtube.com/watch?v=VJov747ZB9s>,
http://www.youtube.com/watch?v=NCh_Y1KE1bs,
<http://www.youtube.com/watch?v=WQGsYqguOJO>,
<http://www.youtube.com/watch?v=K2TPGYwGXww>,
<http://www.youtube.com/watch?v=zDx7zFozJl8>,
http://www.youtube.com/watch?v=_9MAeO2QEUw,
<http://www.youtube.com/watch?v=63OXcszyVvo>,
http://www.youtube.com/watch?v=ZJjWkaxQr_I,
http://www.youtube.com/watch?v=_ZrWIdS88nA,
<http://www.youtube.com/watch?v=hUW7a-SUfrk>,
<http://www.youtube.com/watch?v=s6Ku5sHlg7E>,
<http://www.youtube.com/watch?v=i1F3rU4NO2c>,
<http://www.youtube.com/watch?v=jlbME28F7r0>,
<http://www.youtube.com/watch?v=L7Dcd2KiuaQ>,
<http://www.youtube.com/watch?v=dwAEH8A8LBY>,
<http://www.youtube.com/watch?v=a4PTxLdfeZE>,
<http://www.youtube.com/watch?v=S5a8vOFaiH8>,
http://www.youtube.com/watch?v=wYMJpa6MO_M,
<http://www.youtube.com/watch?v=DFsyOFcMWFc>,
<http://www.youtube.com/watch?v=i3xf81-mapg>,
http://www.youtube.com/watch?v=zUTmiRbR_hQ,
<http://www.youtube.com/watch?v=RpcN8HtsWmk>,
<http://www.youtube.com/watch?v=ZSYNkPREhk8>,
<http://www.youtube.com/watch?v=cy9TX6wgy9A>,
http://www.youtube.com/watch?v=_SMwNJ7wk3g,
<http://www.youtube.com/watch?v=Q1zyV7HvHAE>,
<http://www.youtube.com/watch?v=hl7nT64xFIM>,
<http://www.youtube.com/watch?v=qmx14XgWxAQ>,
http://www.youtube.com/watch?v=yUsrz_5CPco,
<http://www.youtube.com/watch?v=D8K7gaJWPqw>,
<http://www.youtube.com/watch?v=4kFWgHVfAV4>,
<http://www.youtube.com/watch?v=AxPliscpIwQ>,
<http://www.youtube.com/watch?v=epT4wbPvjV0>,
<http://www.youtube.com/watch?v=FLeejhZYWQ>,
<http://www.youtube.com/watch?v=1-1aLLJVEeg>,
<http://www.youtube.com/watch?v=tHjC3JmCW9Q>,
<http://www.youtube.com/watch?v=kYTneSSWvX4>,
<http://www.youtube.com/watch?v=zXheN2k7eIU>,
<http://www.youtube.com/watch?v=CPIp5C6eyBU>,

<http://www.youtube.com/watch?v=aq9Q3vO1ICE>,
<http://www.youtube.com/watch?v=I2R1Az3Vj5I>,
http://www.youtube.com/watch?v=IKv4GW_Iq08,
<http://www.youtube.com/watch?v=bYNBDzNnhLM>,
<http://www.youtube.com/watch?v=WZ-bOhy-gUU>,
<http://www.youtube.com/watch?v=f5vs2ZrDi08>,
<http://www.youtube.com/watch?v=5xnHqMWOHzI>,
http://www.youtube.com/watch?v=1v4Q_A2sRyc,
<http://www.youtube.com/watch?v=LIME3rCxewU>,
<http://www.youtube.com/watch?v=pOmh3gTmg1U>,
<http://www.youtube.com/watch?v=7f9zeZLgbrg>,
<http://www.youtube.com/watch?v=S4hYtsmDGIg>,
<http://www.youtube.com/watch?v=xpWoLKtQLqU>,
<http://www.youtube.com/watch?v=W9v9BS4UTWI>,
http://www.youtube.com/watch?v=sgIli_nOxBI,
<http://www.youtube.com/watch?v=foJeCKy0Kno>,
<http://www.youtube.com/watch?v=N9ZGbLhnSMM>,
<http://www.youtube.com/watch?v=dSaJvz6ENdA>,
<http://www.youtube.com/watch?v=gGO6Ts87kYw>,
<http://www.youtube.com/watch?v=8wiLQ7dZ5gM>,
<http://www.youtube.com/watch?v=UxRxCr2cX60>,
<http://www.youtube.com/watch?v=8kT5GGDvufg>,
<http://www.youtube.com/watch?v=GMvaUMuJDtI>,
http://www.youtube.com/watch?v=mBWI-_WwFzU,
<http://www.youtube.com/watch?v=dzP2jUQgrX4>,
<http://www.youtube.com/watch?v=Mknhumhez-8>,
<http://www.youtube.com/watch?v=tpaUachKhI>, and
<http://www.youtube.com/watch?v=pkWiWhWgkWs>.

- b. FPM's copyrighted musical work "Challenge The Dream" is exploited on the following websites: <http://www.youtube.com/watch?v=C9r-7Hw1-fE>,
<http://www.youtube.com/watch?v=qO4ligXZ1AQ>,
<http://www.youtube.com/watch?v=6a-jEgKDt48>,
<http://www.youtube.com/watch?v=pyXlp0Q0BZE>,
<http://www.youtube.com/watch?v=qWfOiZ1R-s8>,
http://www.youtube.com/watch?v=_CImpnttNzk,
<http://www.youtube.com/watch?v=T87RD9blxUU>,
<http://www.youtube.com/watch?v=kjhV-6w26js>,
<http://www.youtube.com/watch?v=OgFExWrxpF4>,
<http://www.youtube.com/watch?v=Hr3wiA7oFjE>,
<http://www.youtube.com/watch?v=qBQdtmCLP0c>,
<http://www.youtube.com/watch?v=ZLkR2OkaGxQ>,
<http://www.youtube.com/watch?v=PWKDq9drWXQ>,
<http://www.youtube.com/watch?v=iUN2sQZK4ag>,
http://www.youtube.com/watch?v=G-t_T7n746M,
<http://www.youtube.com/watch?v=HlyKr2TPBkA>,
<http://www.youtube.com/watch?v=HhsYOFOEc1c>,

<http://www.youtube.com/watch?v=GGHNtwC1-es>,
<http://www.youtube.com/watch?v=odwrTV3ETl8>,
<http://www.youtube.com/watch?v=64Stx449xwU>,
<http://www.youtube.com/watch?v=u7Jl-0-afe9E>,
http://www.youtube.com/watch?v=sMb2zln_Oms,
<http://www.youtube.com/watch?v=u6GtnuabKUU>,
<http://www.youtube.com/watch?v=feB-e4W9vRg>,
<http://www.youtube.com/watch?v=4Osk9YOLg1o>,
<http://www.youtube.com/watch?v=3GsNMb0bsCY>,
<http://www.youtube.com/watch?v=pVX93F8KBCE>,
<http://www.youtube.com/watch?v=pG8d2dBOqk8>,
<http://www.youtube.com/watch?v=dUr-6xEVPpM>,
<http://www.youtube.com/watch?v=0LpfhdB8--0>,
http://www.youtube.com/watch?v=_UK4eueb2qI,
<http://www.youtube.com/watch?v=bpJUhwFclg>,
<http://www.youtube.com/watch?v=F62HlpuEfA>,
<http://www.youtube.com/watch?v=7DtK07aVofI>,
<http://www.youtube.com/watch?v=0m7yMkW8vSg>,
http://www.youtube.com/watch?v=AacnaVF_j3M,
<http://www.youtube.com/watch?v=cbaMKA1emSY>,
<http://www.youtube.com/watch?v=sHakgtBNjeU>,
<http://www.youtube.com/watch?v=nFigUtiYLoA>,
<http://www.youtube.com/watch?v=DeQI-WdyFI>,
<http://www.youtube.com/watch?v=1rUVCATIAsw>,
http://www.youtube.com/watch?v=7D-Hkl_rXoU,
http://www.youtube.com/watch?v=m_qNgvnifKA,
<http://www.youtube.com/watch?v=rvDCMJVPhO0>,
<http://www.youtube.com/watch?v=rZqtDCmOc5U>,
<http://www.youtube.com/watch?v=jsA7EFJhIXY>,
<http://www.youtube.com/watch?v=ZyquBZX6lMs>,
<http://www.youtube.com/watch?v=NFVPTtYInck>,
http://www.youtube.com/watch?v=4W3_MqJuRmo,
http://www.youtube.com/watch?v=6_6qtp94Ryc,
<http://www.youtube.com/watch?v=mwwBqJ-hqrM>,
http://www.youtube.com/watch?v=ZcbLMeP0k_8,
<http://www.youtube.com/watch?v=gyEuRbQ-d4A>,
http://www.youtube.com/watch?v=4_BE3TssdwY,
http://www.youtube.com/watch?v=Z-tlA_7Jst4,
<http://www.youtube.com/watch?v=DTKIZqfn7hE>,
http://www.youtube.com/watch?v=q_wHQuvr-oQ,
<http://www.youtube.com/watch?v=rDLhrvfkHw>,
<http://www.youtube.com/watch?v=Hkt-SObxHGE>,
http://www.youtube.com/watch?v=r95IAWT_KZk,
<http://www.youtube.com/watch?v=pQ07JREgUm8>,
<http://www.youtube.com/watch?v=n87hg1FrzNg>,
<http://www.youtube.com/watch?v=f0QYdYE-Ja8>,

<http://www.youtube.com/watch?v=FUjeZx51Pcw>,
<http://www.youtube.com/watch?v=yBiqo6bmidk>,
<http://www.youtube.com/watch?v=4YgRMmASSwI>,
<http://www.youtube.com/watch?v=FJrQBFvhJJg>,
<http://www.youtube.com/watch?v=Il1yz5j1ops>,
<http://www.youtube.com/watch?v=IdU0SeV98T4>,
http://www.youtube.com/watch?v=KKWmJ8i_FVE,
<http://www.youtube.com/watch?v=kX0sctCqqzw>,
<http://www.youtube.com/watch?v=4BRjGSjBC0k>,
<http://www.youtube.com/watch?v=Ka-xDMKyMTc>,
<http://www.youtube.com/watch?v=qH9-4sdw8hc>,
<http://www.youtube.com/watch?v=ZefiW2dHnws>, and
<http://www.youtube.com/watch?v=UruorhMUWY>.

c. FPM's copyrighted musical work "Charlie" is exploited on the following website:
<http://www.youtube.com/watch?v=mIxnD2n2tKc>.

d. FPM's copyrighted musical work "Corn Liquor" is exploited on the following websites:
<http://www.youtube.com/watch?v=25za3GpRZmI>, and
<http://www.youtube.com/watch?v=N7-MR4tz-QY>.

e. FPM's copyrighted musical work "Cuttin Loose" is exploited on the following websites:
<http://www.youtube.com/watch?v=9uPJ9Wz8KbI>,
http://www.youtube.com/watch?v=__Qx88Zij6g,
<http://www.youtube.com/watch?v=MqtqA9YXkHo>,
<http://www.youtube.com/watch?v=6Y7O43hOj4I>,
<http://www.youtube.com/watch?v=nxc8ZBdAiIw>,
<http://www.youtube.com/watch?v=dAntVEUopfk>,
<http://www.youtube.com/watch?v=RPwQouVuD9w>,
<http://www.youtube.com/watch?v=zxMWF7HSNE4>,
<http://www.youtube.com/watch?v=2Glkb8j5kVM>,
<http://www.youtube.com/watch?v=yeWG-z4uxOE>,
<http://www.youtube.com/watch?v=aQyv3HzkBf8>,
<http://www.youtube.com/watch?v=gzAkwWNnv8c>,
http://www.youtube.com/watch?v=_FgMQR9G8u0,
<http://www.youtube.com/watch?v=FzaJkxPODM>,
<http://www.youtube.com/watch?v=ZoE31wU7znk>,
<http://www.youtube.com/watch?v=KuMzMgLKefl>,
<http://www.youtube.com/watch?v=sFgdgMwm8EA>,
<http://www.youtube.com/watch?v=qK0brmsMqug>,
<http://www.youtube.com/watch?v=lXoRl5ZPNLc>,
<http://www.youtube.com/watch?v=lUqkVttu5Bw>,
<http://www.youtube.com/watch?v=BqT3CDuI4mc>,
<http://www.youtube.com/watch?v=q0B7jozGDII>,
<http://www.youtube.com/watch?v=pS4srpmaR8M>,
<http://www.youtube.com/watch?v=9pdJL84scs0>,
http://www.youtube.com/watch?v=_57UFOJt8GU,

<http://www.youtube.com/watch?v=mX1sPUXVQo4>,
<http://www.youtube.com/watch?v=XhD1MfRkALs>,
<http://www.youtube.com/watch?v=5oFLFSHG2zk>,
<http://www.youtube.com/watch?v=46PCcmPngFo>,
<http://www.youtube.com/watch?v=uEgHD5bDXog>,
<http://www.youtube.com/watch?v=22jdtCL65Uw>,
<http://www.youtube.com/watch?v=HVdNN9Cw7VI>,
<http://www.youtube.com/watch?v=J6CCipNNleQ>,
<http://www.youtube.com/watch?v=vTgvWvAlI10>,
<http://www.youtube.com/watch?v=j8UE4GFUI3o>,
<http://www.youtube.com/watch?v=6pYQp33A2Hw>,
<http://www.youtube.com/watch?v=OFCPZ-lbGh8>,
<http://www.youtube.com/watch?v=zgJmdAi6Snk>,
<http://www.youtube.com/watch?v=qO6idAzZVys>, and
<http://www.youtube.com/watch?v=tSlyfSbl72E>.

- f. FPM's copyrighted musical work "Driftwood" is exploited on the following websites:

<http://www.youtube.com/watch?v=nufhPBQ3jw0>,
<http://www.youtube.com/watch?v=gpIZcO7UdcQ>,
<http://www.youtube.com/watch?v=Yb22j4gJjUY>,
<http://www.youtube.com/watch?v=WFg6iJjwdXU>,
<http://www.youtube.com/watch?v=zih1xY7SGeQ>,
<http://www.youtube.com/watch?v=g36AoAGd3AE>,
<http://www.youtube.com/watch?v=wry90CueIRs>, and
http://www.youtube.com/watch?v=9lgvmO_WBig.

- g. FPM's copyrighted musical work "The Edge" is exploited on the following websites:

<http://www.youtube.com/watch?v=LUSpk68PHFE>, and
http://www.youtube.com/watch?v=Hgv0L_r1jCs.

- h. FPM's copyrighted musical work "Feel Good" is exploited on the following websites:

<http://www.youtube.com/watch?v=Dpzab8I8uzI>,
<http://www.youtube.com/watch?v=nU4NzGuSvAM>,
<http://www.youtube.com/watch?v=YpvIMti3IaA>,
<http://www.youtube.com/watch?v=HKdvaA6rnvs>,
<http://www.youtube.com/watch?v=O5JmiRIQ0CQ>,
<http://www.youtube.com/watch?v=aTbrL2lfyfo>, and
<http://www.youtube.com/watch?v=afzPCDs-zIo>.

- i. FPM's copyrighted musical work "Funky Pad" is exploited on the following websites:

http://www.youtube.com/watch?v=O8W_KVRIHBc,
<http://www.youtube.com/watch?v=OR13JKPJzn0>,
<http://www.youtube.com/watch?v=o2WMGcGM2co>, and
<http://www.youtube.com/watch?v=Zn0VK39UZEI>.

- j. FPM's copyrights music work "Ground Squad" is exploited on the following websites:
<http://www.youtube.com/watch?v=Z0ZmSupfbtw>, and
<http://www.youtube.com/watch?v=jL7H4fxrKzM>.
- k. FPM's copyrighted musical work "Hear Me Calling" is exploited on the following websites: <http://www.youtube.com/watch?v=z5vdF7A3HkY>, and
<http://www.youtube.com/watch?v=AdbsJLCFs4M>.
- l. FPM's copyrighted musical work "Heartland" is exploited on the following websites:
http://www.youtube.com/watch?v=W_vKAaSzTng,
<http://www.youtube.com/watch?v=VxhGmcRYaY8>,
<http://www.youtube.com/watch?v=49ic-d-Ogu0>,
<http://www.youtube.com/watch?v=x1xaqZyrHSg>,
<http://www.youtube.com/watch?v=Vk7m6ykg6hw>,
<http://www.youtube.com/watch?v=M59nVjKkqME>,
<http://www.youtube.com/watch?v=KITcM3xF-Aw>,
<http://www.youtube.com/watch?v=xFv-oFKG3vU>,
<http://www.youtube.com/watch?v=Yoy7CkJ32CY>,
<http://www.youtube.com/watch?v=Zk440qas2do>,
http://www.youtube.com/watch?v=BPF3b3Zi8_g, and
<http://www.youtube.com/watch?v=GRJPEtk2NcI>.
- m. FPM's copyrighted musical work "Mod Indigo" is exploited on the following websites:
<http://www.youtube.com/watch?v=CXJSzoy9eXk>,
<http://www.youtube.com/watch?v=3GM9TgMpbXU>, and
http://www.youtube.com/watch?v=vnfYc_Uo12g.
- n. FPM's copyrighted musical work "Moonbeams" is exploited on the following website:
<http://www.youtube.com/watch?v=GqgayE8URL4>.
- o. FPM's copyrighted musical work "Right On It" is exploited on the following website:
<http://www.youtube.com/watch?v=4rMTe2p2aRU>.
- p. FPM's copyrighted musical work "Soul Thang" is exploited on the following website:
<http://www.youtube.com/watch?v=BDvkSB6YdrI>.
- q. FPM's copyrighted musical work "Spice Factor" is exploited on the following website:
<http://www.youtube.com/watch?v=4rMTe2p2aRU>.
- r. FPM's copyrighted musical work "Surf Nation" is exploited on the following websites:
<http://www.youtube.com/watch?v=Ryd0iNnezCI>, and
<http://www.youtube.com/watch?v=QWYOI4DOhQU>.
- s. FPM's copyrighted musical work "Swing Cheese" is exploited on the following website:
http://www.youtube.com/watch?v=6S_HTZc_J50.
- t. FPM's copyrighted musical work "Tea For Two" is exploited on the following website:
<http://www.youtube.com/watch?v=DRzRYDq8twk>.

- u. FPM's unregistered musical work "Through The Grassy Hills" is exploited on the following websites: <http://www.youtube.com/watch?v=4-nV6rtVLkQ>, <http://www.youtube.com/watch?v=6-yhzmfmUuTI>, <http://www.youtube.com/watch?v=2-LgON6Juqs>, http://www.youtube.com/watch?v=_ALoKXm2qBI, <http://www.youtube.com/watch?v=fxrkGMwwB9E>, <http://www.youtube.com/watch?v=rxTApNFn5Dw>, <http://www.youtube.com/watch?v=vIc7pT-1b5U>, <http://www.youtube.com/watch?v=fZN4GA9RZis>, and http://www.youtube.com/watch?v=6KyI_7vbrIY.
- v. FPM's copyrighted musical work "Up The Down Beat" (originally titled "Kick It") is exploited on the following websites: <http://www.youtube.com/watch?v=GV9FJfA5IDg>, <http://www.youtube.com/watch?v=QvuECgFnf0g>, and <http://www.youtube.com/watch?v=1CZhZvGAFyQ>.
- w. FPM's copyrighted musical work "Your Eyes On Glory" is exploited on the following websites: <http://www.youtube.com/watch?v=qf8ZCZ9cUac>, http://www.youtube.com/watch?v=oRXNAhMUH_Q, <http://www.youtube.com/watch?v=blup1EH1Crk>, and <http://www.youtube.com/watch?v=ERtRt6DmIsY>.

19. Upon information and belief, Arbogast posted, or caused to be posted, the videos identified in paragraph 18.
20. Arbogast did not receive a license to exploit FPM's Copyrighted Music and Unregistered Musical Work in the manner set forth in paragraph 18.
21. Upon information and belief, Arbogast copied and publicly performed FPM's Copyrighted Music and Unregistered Musical work through digital transmissions on the websites set forth in paragraph 18.
22. Upon information and belief, at all relevant times, Arbogast maintained editorial control for content performed and/or copied on the websites set forth in paragraph 18.
23. FPM hired TuneSat, LLC ("TuneSat"), an online audio fingerprint technology and recognition service. TuneSat digitally detects music exploitation by searching across various platforms including hundreds of networks in countries around the world, including the United

States, United Kingdom, Germany, France, Spain, and Italy. TuneSat works for various large music publishers, and has a database of tens of millions of songs.

24. TuneSat detected the use of FPM's music set forth in paragraph 18.

25. In October 2014, TuneSat, contacted Arbogast and was directed to contact General Manager Blake Arbogast regarding Arbogast's use of FPM Copyrighted Music and Unregistered Musical Work.

26. In November 2014, TuneSat wrote to Blake Arbogast multiple times to confirm he was aware of the unauthorized uses of FPM's Copyrighted Music and Unregistered Musical Work.

27. In March 2015, TuneSat spoke with Blake Arbogast who confirmed he had received TuneSat's prior email correspondence and would respond.

28. Receiving no response, on May 19, 2015, TuneSat sent a letter demanding Arbogast provide proof of a valid license for its 279 uses of FPM's Copyrighted Music and Unregistered Musical work or to contact TuneSat to resolve the issue of Arbogast's unlicensed uses.

29. TuneSat received no response to its letter.

Count I:
Copyright Infringement

30. FPM incorporates the allegations set forth in paragraphs 1 through 29 hereof, inclusive, as though the same were set forth herein.

31. This cause of action arises under 17 U.S.C. § 501 and concerns the FPM Copyrights, but will include the Unregistered Musical Work once a registration issues for that work as well.

32. Each of the FPM Copyrights has been registered with the United States Copyright Office.

33. Upon information and belief, the Unregistered Musical Work will be subject to a copyright registration during the pendency of this action.
34. FPM owns all exclusive rights under 17 U.S.C. § 106 to the FPM Copyrighted Music and Unregistered Musical Work.
35. Each of the musical works covered by the FPM Copyrights and the Unregistered Musical Work is an original work and constitutes copyrightable subject matter within the meaning of 17 U.S.C. § 102.
36. FPM has never granted Arbogast or otherwise authorized Arbogast to exploit the musical works covered by the FPM Copyrights or the Unregistered Musical Work.
37. Arbogast's acts violate FPM's exclusive rights under 17 U.S.C. §106.
38. Arbogast's infringement of the FPM Copyrights and the Unregistered Musical Work is and has been willful, intentional, purposeful, and/or in disregard of FPM's rights.
39. FPM is entitled to its damages and Arbogast's profits from the alleged infringement, in an amount to be proven at trial.
40. In the alternative, FPM is entitled to statutory damages, in an amount of up to \$150,000 per infringed copyright.

PRAYER FOR RELIEF

WHEREFORE, FPM respectfully prays for judgment against Arbogast as follows:

- (a) for a ruling that Arbogast has willfully infringed FPM's copyrights;
- (b) for injunctive relief prohibiting Arbogast from exploiting the FPM Copyrighted Music;

- (c) for FPM's damages and, to the extent not duplicative, Arbogast's profits attributable to the infringement;
- (d) in the alternative to actual damages, for statutory damages under 17 U.S.C. § 504(c), in an amount of up to \$150,000 per work;
- (e) for FPM's costs of this action, including reasonable attorneys' fees under 17 U.S.C. § 505;
- (f) for prejudgment and post judgment interest; and
- (g) for such other and further relief as the Court deems proper and just.

DEMAND FOR JURY TRIAL

FPM requests a trial by jury on all issues so triable.

Respectfully submitted,

BAKER & HOSTETLER LLP

Dated: February 9, 2017
Cleveland, Ohio

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